

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THERMO FINNIGAN LLC,

Plaintiff and  
Counterclaim Defendant,

$$V_n$$

APPLERA CORPORATION,

Defendant and  
Counterclaim Plaintiff.

Civil Action No.: 04-1505-GMS

**[PROPOSED] SCHEDULING ORDER**

This \_\_\_\_\_ day of \_\_\_\_\_ 2005, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(b) on April 27, 2005, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before May 6, 2005.
2. **Joinder of Other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before October 7, 2005.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than January

20, 2006. If defendant elects to rely on advice of counsel as a defense to willful infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiff no later than January 20, 2006.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on March 16, 2006 at 10:00 a.m. The *Markman* hearing is scheduled for a total of 3 hours with each side having 1.5 hours. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before December 22, 2005, the parties shall submit a final joint claim chart, which shall include citations to intrinsic evidence. The parties shall exchange opening claim construction briefs on January 19, 2006 and answering claim construction briefs on February 9, 2006.

5. **Discovery.** All discovery in this case shall be initiated so that it will be completed on or before March 17, 2006. Expert Discovery in this case shall be initiated so that it will be completed on or before June 23, 2006.

a. **Discovery Disputes.** Should counsel find they are unable to resolve a discovery dispute, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the conference, by hand delivery or facsimile at (302) 573-6472, the party seeking relief shall file with the court a letter agenda not to exceed two (2) pages outlining the issues in dispute. Should the court find further briefing necessary upon conclusion of the telephone conference, the court shall order the party seeking relief to file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party

seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers Filed Under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within 10 days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

**If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).**

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact Magistrate Judge Thyng to schedule a settlement conference with counsel and clients.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than June 19, 2006. Answering letter briefs shall be no longer than five (5) pages and filed with the court no later than June 26, 2006. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before June 30, 2006. The Court shall hold a status conference by telephone to hear argument and to determine whether the filing of any motion will be permitted on July 6,

2006 at 10:00 a.m. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** Should the Court permit the filing of summary judgment motions an opening brief and affidavits, if any, in support of the motion shall be served and filed on or before July 21, 2006. Answering briefs shall be served and filed on or before August 15, 2006. Reply briefs shall be served and filed on or before August 28, 2006. If there is no decision at the July 6, 2006 teleconference as to permitting summary judgment motions, this schedule shall be altered so as to commence briefing two weeks following the Court's decision, with answering briefs and reply briefs to be served and filed no later than four weeks and six weeks, respectively, after the service and filing of the opening briefs. Parties must submit an original and two (2) copies.

10. **Applications by Motion.** Except as provided in this Order or for matters relating to scheduling, any application to the Court shall be by written motion filed with the Clerk. Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to Local Rule 7.1.4.

12. **Status/Daubert Conference.** On or before June 30, 2006, the parties shall submit a joint agenda identifying any Daubert issues that the parties intend to raise. The Court will hold a telephone conference on July 6, 2006 at 10:00 a.m. to discuss Daubert issues identified in the joint agenda.

13. **Pretrial Conference.** On February 19, 2007, the Court will hold a Pretrial Conference in Chambers with counsel beginning at 10:00 a.m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). Thirty (30) days before the joint proposed pretrial order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. *Motions in limine:* No party shall file more than ten (10) motions *in limine*. Briefs (**opening, answering and reply**) on all motions *in limine* shall be filed by February 1, 2007, with parties exchanging opening briefs on January 19, 2007, and answering briefs on January 26, 2007. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before January 22, 2007.

14. **Trial.** This matter is scheduled for a 5-day jury trial beginning at 9:00 a.m. on March 19, 2007.

15. **Scheduling.** The parties shall direct any requests or questions regarding the scheduling and management of this matter to Chambers at (302) 573-6470.

16. **Attached Addendum:** An addendum is attached summarizing and setting forth additional scheduling dates.

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UNITED STATES DISTRICT JUDGE

**Addendum to Scheduling Order  
Civil Action No. 04-1505-GMS**

<b>Event</b>	<b>Proposal for No. 04-1505</b>
<b>Fact Discovery</b>	
Exchange of Initial Disclosures	May 6, 2005
For any discovery request served by July 1, 2005, a full and complete response/production will be finished by	Sept. 23, 2005
Motion to Amend Pleadings	Oct. 7, 2005
Motion to Join Additional Parties	Oct. 7, 2005
Notice of Reliance on Advice of Counsel as a Defense to Willful Infringement, Production of Opinions of Counsel, and Production of all Related Materials	Jan. 20, 2006
For any discovery request served by Jan. 1, 2006, a full and complete response/production will be finished by	Feb. 17, 2006
Completion of Fact Discovery	Mar. 17, 2006
<b>Markman Proceedings</b>	
Exchange of claim terms to be construed and proposed constructions	Nov. 30, 2005
Deadline for parties to meet and confer regarding narrowing and reducing the number of claim construction issues	Dec. 8, 2005
Submission of Joint Claim Construction Chart	Dec. 22, 2005
Markman Briefs	Opening: 1/19/06 Response: 2/9/06
Markman Hearing	Mar. 16, 2006 10 a.m.

<b>Expert Discovery</b>	
Opening Expert Reports (burden of proof)	May 5, 2006
Answering Expert Reports	May 26, 2006
Completion of Expert Discovery	June 23, 2006
<b>Dispositive Motions</b>	
Letter Briefs Seeking Permission	Opening: 6/19/06 Response: 6/26/06 Reply: 6/30/06
Submission of Joint Agenda Identifying Daubert Issues	June 30, 2006
Hearing Concerning Permission to File Summary Judgment Motions	July 6, 2006 10 a.m., by phone
Hearing to Discuss Daubert Issues	July 6, 2006 10 a.m., by phone
Summary Judgment Briefing	Opening: 7/21/06 Response: 8/15/06 Reply: 8/28/06
Summary Judgment Hearing	at Court's discretion
<b>Trial Phase</b>	
Motions in Limine	Opening: 1/19/07 Response: 1/26/07 Reply: 2/1/07
Submission of Joint Proposed Pretrial Order	Jan. 22, 2007
Pretrial Conference	Feb. 19, 2007 10 a.m.
Trial	Mar. 19, 2007